LeMond Cycling, Inc. v. Trek Bicycle Corporation

Doc. 158 Att. 2

Exhibit 3

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April 29, 2009

Jennifer M. Robbins
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2800 LaSalle Plaza
800 LaSalle Avenue
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RE: *LeMond Cycling, Inc. v. Trek Bicycle Corporation*
Case No. 08-cv-1010 (RHK/JSM)

Dear Jennifer:

I write in response to your April 28, 2009 letter regarding your refusal to produce the tape recording(s) that LCI has withheld under a work product privilege assertion at LCI PRIV 202-203. Our request was and is supported by her deposition testimony as well as Greg LeMond's testimony and the lack of requisite information as to the tapes in your discovery responses and privilege log. Greg testified that Kathy was most knowledgeable about the location and status of the Betsy Andreu tapes.

Q. So you're certain that you taped Betsy Andreu, but you believe you threw the tape away?

A. Actually, I don't know. Because I didn't keep track of the tapes, my wife did.

Q. We can talk to your wife about it tomorrow.

A. Yes.

(Greg LeMond Deposition Tr., 12/15/08 at 225:5-11). When Mrs. LeMond's deposition was held last week on April 22, 2009, she testified that she was involved in all calls with Betsy Andreu, that she turned over Betsy Andreu tapes to her attorneys, and that she knows of no involvement by lawyers in the tapes. Moreover, she testified that as of the date of her deposition she was not aware of any Betsy Andreu tapes made without her involvement.

Q. And how many times did you tape Betsy?

A. Maybe once or twice.

Q. Where are those tapes?

A. If I still have it, I gave it to the attorneys.

(Rough Draft – Unofficial Transcript of Kathy LeMond Deposition, 4/22/09, 62:21-24)

Q. Were you present on any or all of these calls that were taped?

A. For all.

(*Id.*, 64:24-65:2)

Q. You said that you initially taped Betsy because you didn't know her and didn't trust her, but after you got to trust her, then you taped over her prior tapes?

A. Uh-huh.

Q. Your answer is yes?

A. On some of them, yes. I think we did. I am not 100 percent sure, but whatever remained, I turned over to our attorneys.

(*Id.*, 67:2-10)

Q. In these calls with Betsy Andreu, were your lawyers involved in any of those calls?

MS. RAHNE: Object to the form.

THE WITNESS: The original phone calls with Betsy?

BY MR. WEBER:

Q. Yes.

A. No.

Q. Did your lawyers instruct you to make any of the calls to Betsy Andreu?

A. No, no. She called us.

Q. So the Betsy Andreu taped phone calls you did without the assistance of your counsel?

MS. RAHNE: I just want to object to the degree that she knows. There may be calls that Greg has made with John that Kathy is not speaking to right now.

MR. WEBER: To your knowledge – let's repeat the question. (The requested portion was read back by the reporter.)

THE WITNESS: That's correct.

BY MR. WEBER:

Q. Are you aware of any calls that Greg taped with Betsy Andreu that you were not involved in?

A. No.

(*Id.*, 72:11-73:13).

As to your position regarding Mrs. LeMond's knowledge of the tapes, her last answer to Mr. Weber, *supra*, made it seem unlikely that there were Betsy Andreu tapes that she both did not participate in and then was unaware of *as of the date of her deposition*.

LCI is obligated to justify how they satisfy the definition of work product. While you provide some information in your letter regarding Sidney Bluming's involvement, you have not provided that information or other basic information as to the withheld tapes in your discovery responses or log as is required. (1/15/09 Hearing Tr. at 18 re LCI's agreement to answer Trek's Interrogatory No. 4) (1/16/09 Order) Indeed, LCI's and Greg LeMond's February 5, 2009 discovery responses failed to provide all information requested, including the date and all parties who participated in or overheard the conversations. Likewise, your revised privilege log of April 17, 2009 failed to correct the deficiencies in LCI PRIV 202-203, which were raised in motion to compel briefings as well as raised by me, again, in our conference call on April 22, 2009 regarding privilege logs.

Therefore, please fully respond to Interrogatory No. 4 and revise LCI PRIV 202-203 so that we may make a determination as to whether to formally challenge your assertion of work product privilege.

In addition, please provide dates and/or authors for the documents on your privilege log for which you have not yet done so. Also, in revising your logs, where you indicate a document formerly was privileged but has been produced—*e.g.*, LCI PRIV 21-23; LCI PRIV 45; LCI PRIV 110-114; LCI PRIV 827-28; LCI PRIV 914-915i; LCI PRIV 943; LCI PRIV 976-976b—please provide the LCI number under which it was produced. Further, please provide an index identifying the persons (authors, recipients, cc's) listed on your logs.

Finally, we again request a declaration from Mr. Bluming as required by the caselaw we forwarded to you so that we can determine whether any challenges need to be made based on his capacity.

Sincerely,

Kristal S. Stippich /dp

Kristal S. Stippich

KSS:dmp

cc: Ralph A. Weber (w/enc.) (via email)
Erik Salveson (w/enc.) (via email)

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A. The conversation with John Burke. We taped Betsy Andreu at the very beginning.

Stephanie McIllvain. Julien Devriese, Bob Mianski.

I think Greg taped one Trek dealer. My mind will come back to me if there are any more, but that's all I can remember at this moment.

Q. Why did you tape Betsy Andreu? Isn't she a friend of yours?

A. We didn't trust her. We didn't know her at all. I thought Frankie was Lance's best friend and what was she doing calling us up for? We had already been threatened, so we were unwilling to open ourselves up to being set up again.

Q. So you taped Betsy because you didn't trust her?

A. Right.

Q. And how many times did you tape Betsy?

A. Maybe once or twice.

Q. Where are those tapes?

A. If I still have it, I gave it to the attorneys.

Q. Are there some tapes that you didn't save?

A. Oh, yeah.

Q. Why is that?

A. Because I didn't think it mattered. I mean, what did I destroy? Years ago, like being, I would have taped over something or -- just -- if I didn't think it was an important conversation.

There weren't that many tapes, let's just say, and if I destroyed any, it was just because there was nothing on it, not because there was something incriminating, it was just that it wasn't an important tape to save.

Anything we taped, we taped because the things that had been happening to us were so outrageous that we wanted proof of what is going on.

Q. Well, how did you decide which tapes to keep and which tapes to destroy?

A. Well, I didn't destroy any that we had of John Burke, if that's what you mean. It was just if it was a call that didn't go through or something like that.

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I can't really remember more than that.

Q. Well, you said that you had some tapes that you taped over --

A. Well, let's just --

Q. Just a second, Ms. LeMond.

A. Oh, sorry.

Q. It means the court reporter's job harder.

A. Yeah, I understand.

Q. You said that there were some tapes where you said nothing was on them that was important and so you taped over them.

A. Yeah, like let's say Greg had some conversation with Betsy in the beginning. By then we probably trusted her, so I wouldn't have felt that we needed to keep that.

Or like let's say Greg had called John or John had called Greg. Maybe if it didn't go through or if I only talked to Cindy or something, maybe we would have taped over there.

Q. Were you present on any or all of these calls that were taped?

A. For all.

Q. Tell me how that worked. Would you and Greg decide, okay, we are going to place this call and let's set up the recording equipment that I am going to listen in, or how did it work?

A. Well, I usually sat in the -- like if Greg was in the library, he would be having -- like with the John Burke conversations, I don't think you understand what was really happening at that point in time.

And this was a big deal. This was, basically, CEO of Trek telling Greg "You need to lie here. I need you to lie. It's Armstrong or you."

And it was our business. So yes, I was present for all of that because it was very important to our family.

Q. Okay. And my question was, how did this work, would you and Greg decide --

A. Okay so.

Q. Just a second?

MS. RAHNE: Let him finish his question.

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THE WITNESS: Sorry.

BY MR. WEBER:

Q. How would it go when you would go and make these calls and tape these people? Tell me what process you and Greg would go through to get ready and decide what to do.

A. Well, it just always was hooked up to the phone in that week, so if Greg -- if John said to Greg, "I am going to call you after you get this fax," then Greg would answer the phone in that room and have the conversation with John in that room.

Q. Why were you sitting in?

A. Because I tend to always sit in. I have been a part of it since 1980.

Q. When you say you tend always to sit in because you have been a part of it, what do you mean?

A. Greg's career. This was -- we have been a very strong partnership, and this was our family. I mean, this was -- LeMond Cycling is not just Greg, it's us.

And Greg and I talk about this stuff.

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Q. You said that you initially taped Betsy because you didn't know her and didn't trust her, but after you got to trust her, then you taped over her prior tapes?

A. Uh-huh.

Q. Your answer is yes?

A. On some of them, yes. I think we did. I am not 100 percent sure, but whatever remained, I turned over to our attorneys.

Q. What -- why is it that if you felt you could trust her, then you didn't need to retain the tape?

A. Because she was just -- we were just talking. We were just friends. I mean, we became friends.

Q. Did you --

A. I didn't tape her that many times, either.

Q. At some point Greg explained to his former agent, Mr. Gibson, that he had the tapes and was using them against Trek for leverage.

What's your --

A. Oh, I do not believe that would ever be the word that Greg would say. As leverage? I think Greg would say as proof of what

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happened to him.
Q. Have you listened --
A. It's a totally different -- I don't care what Mr. Gibson said. I don't believe that Greg believed those tapes were leverage. I believe they were evidence of the criminal activity that we felt was going on.
Q. Do you think Mr. LeMond, Greg, has used the tapes as leverage against Trek?
A. I don't think leverage. Leverage implies some kind of malicious intent. Greg does not have malicious intent.
Q. Well, do you think Greg has used the tapes, say, as a bargaining chip? In other words, if you don't do what I want, then I will release these tapes?
A. I don't believe so.
Q. With a use do you think Greg has made of the tapes in his dealings with Trek?
A. I think it has been an insurance policy and fact of what really transpired. And if we didn't have those tapes, we wouldn't have any of the evidence of what really happened in that period.

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Q. When you say "insurance policy," what do you mean?
A. That we could prove that what we said happened, happened.
Q. And why would that be helpful?
A. Why would that be helpful?
Q. In what way is that an insurance policy?
A. Because it seems like people do a lot of twisting of what really happened, and that is something, essentially, black and white, after it's transcribed, that would validate the story of what was happening.
Q. Now, back in August of 2001 it has been reported that there was a telephone conversation between Greg and Lance.
A. Yes.
Q. And were you present for that?
A. Yes, I was.
Q. And where did the call occur? Was it in a car? Was it in your home? Was it both?
A. In my car. I had just picked Greg up from baggage claim at the Minneapolis airport.
Q. Who was driving?
A. Greg drove.

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Q. And during the course of the conversation, were you taking notes?
A. Yes.
Q. Why?
A. Because the moment Lance said, "It's Lance," there was so much aggression and anger coming from him, and we didn't know Lance -- that side of Lance at that point, that we wanted to write down what was going on because it was clear this was a bad call.
Q. Did you keep those notes?
A. Yes, I did.
Q. Have you turned them over?
A. Yes, I did.
Q. Because we received some notes that appear to be of a telephone conversation.
A. Yeah.
Q. Now, is there just one set of notes, or did you go and re-write them later?
A. Maybe when we got home, I would have completed something, but I don't remember if I did that.
I was writing as fast as I could on whatever was in the car.

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Q. And as you were taking notes, was the call on a speaker phone?
A. No. Greg has, like, bad hearing, so his ear piece is turned up really high, and the whole time he was driving, he was doing this so I could do everything (indicating).
Q. So you could hear both sides of the conversations?
A. Yes, I could.
Q. Did you make an effort, when you were taking notes, to write down everything that you thought was important?
A. Yeah, pretty much.
Q. Can you think of anything that was important on the call that you left out of the notes?
MS. RAHNE: Object to the form.
THE WITNESS: There could be really short one or two words that would trigger what really was said. It wasn't written down verbatim. That would have not been possible.
BY MR. WEBER:
Q. But you made an effort to capture --
A. A lot of the important things.

Q. -- a lot of the important things?
A. Yeah.
Q. Is there anything that you intentionally left out of the notes?
A. No.
Q. So as you sit here today, you think those notes are the best recorded evidence of what happened during that call?
A. Yes.

Q. In these calls with Betsy Andreu, were your lawyers involved in any of those calls?
MS. RAHNE: Object to the form.
THE WITNESS: The original phone calls with Betsy?
BY MR. WEBER:
Q. Yes.
A. No.
Q. Did your lawyers instruct you to make any of the calls to Betsy Andreu?
A. No, no. She called us.
Q. So the Betsy Andreu taped phone calls you did without the assistance of your counsel?
MS. RAHNE: I just want to object to the degree that she knows. There may be

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calls that Greg has made with John that Kathy is not speaking to right now.

MR. WEBER: To your knowledge -- let's repeat the question.

(The requested portion was read back by the reporter.)

THE WITNESS: That's correct.

BY MR. WEBER:

Q. Are you aware of any calls that Greg taped with Betsy Andreu that you were not involved in?

A. No.

Q. You said that you also taped Julien Devrees?

A. Yes.

Q. Where is the Julien Devrees tape?

A. I do not know. And I want it.

Q. Why?

A. Because he talks about Lance's EPO use on that tape.

Q. How did that call come about?

A. When Lance threatened to find ten people who said that Greg had used EPO, we thought the most likely person that he would turn to was Julien Devrees.